UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PRIDDIS MUSIC, INC.,

Plaintiff,

- against -

05-CV-0491
DNH/DRH

TRANS WORLD ENTERTAINMENT CORPORATION,

Defendant.

DEFENDANT/ COUNTER-CLAIM PLAINTIFF TRANS WORLD ENTERTAINMENT CORPORATION'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Dated: October 2, 2006

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Pursuant to Local Rule 7.1 of the United States District Court, Northern District, Defendant/Counter-Claim Plaintiff Trans World Entertainment Corporation ("TWEC") hereby submits this Statement of Undisputed Facts in Support of its Motion for Summary Judgment against Plaintiff/Counter-Claim Defendant Priddis Music, Inc. ("Priddis").

1. TWEC is a New York corporation that owns and operates retail music stores throughout the United States. See Exhibit B to the Declaration of Robert Tietjen, dated October 2, 2006 ("Tietjen Dec.") at ¶¶ 3, 4.[1]

2. Priddis is a Nevada corporation that manufactures and markets karaoke music products. See Compl. ¶2.

3. On June 5, 2004, Priddis filed a four-page complaint in the state court of Utah alleging TWEC breached the Vendor Agreement. See Exhibit K to Tietjen Dec.[2]

4. That action was subsequently dismissed based on a choice of forum clause present in the agreement between the parties. See Exhibit G to Tietjen Dec.

5. On April 20, 2005, Priddis filed the instant action. See Exhibit B to Tietjen Dec.

[1] While the Complaint to this action is attached as Exhibit B to the Tietjen Dec., for the purposes of this Declaration of Undisputed Facts, it will be cited as "Compl."

[2] While the Utah Complaint is attached as Exhibit K to the Tietjen Dec., for the purposes of this Declaration of Undisputed Facts, it will be cited as "Utah Compl."

6. In 1999, Priddis and TWEC entered into negotiations for a business relationship that would have TWEC distribute Priddis karaoke music product. See Exhibit I to Tietjen Dec. at 20:17-22:13.

7. Prior to Priddis, TWEC was supplied karaoke products by a company called Sound Choice. See Exhibit I to Tietjen Dec. at 22:1-13; Exhibit L to Tietjen Dec. at ¶ 8.

8. The relationship between TWEC and Priddis was memorialized in several agreements that encompassed the contractual terms of the parties. See Compl. ¶ ¶8, 11, 18, 26; Exhibit I to Tietjen Dec. at 29:23-30:3.

9. On or about May 25, 1999, TWEC and Priddis entered into an agreement known as the "Buy Out Agreement," whereby Priddis agreed to trade TWEC's on-hand karaoke stock with Priddis's karaoke product. See Compl. ¶¶ 11, 12; Exhibit A to Tietjen Dec.; Exhibit I to Tietjen Dec. at 152:8-153:11, 155:12-14.

10. Priddis agreed to accept the Sound Choice product even though it was aware that it would have no value to Priddis. See Exhibit E to Tietjen Dec. at 261:7-262:15.

11. When TWEC and Priddis disagreed with regard to the proper credits under the Buy Out Agreement, Priddis agreed to accept the TWEC position and to "write off" the difference. See Compl. ¶15.

12. On or about October 1, 1999, TWEC and Priddis entered into a written Point of Sale Display Agreement ("Display Agreement") which set forth the rights and obligations regarding the display racks that Priddis supplied to TWEC for the display of its product. Compl. ¶ 16, ¶18; Exhibit I to Tietjen Dec. at 167:17-168:21.

13. Priddis agreed to supply display racks for TWEC store locations in return for TWEC's "best efforts" in purchasing enough Priddis product to fill those racks. See Exhibit C to Tietjen Dec. at ¶3; Exhibit I to Tietjen Dec. at 171:18- 172:3; Exhibit F to Tietjen Dec. at 158:12-159:1.

14. According to the terms of the Display Agreement, one year after TWEC fulfilled that obligation, ownership of the racks passed to them. See Exhibit C to Tietjen Dec.; Compl. ¶19.

15. On or about June 7, 1999, TWEC and Priddis executed a "Vendor Approval Request" form ("Vendor Agreement") which set forth the terms under which TWEC and Priddis agreed to operate. See Exhibit D to Tietjen Dec.; Compl. ¶26.

16. Under the Vendor Agreement, Priddis agreed that product from any regular orders placed by TWEC were "100 percent returnable, no exceptions." See Exhibit D to Tietjen Dec.

17. This provision was understood by both TWEC and Priddis to allow the unrestricted return of product. See Exhibit I to Tietjen Dec. at 194:14-195:4; Exhibit E to Tietjen Dec. at 316:14-317:11; Exhibit F to Tietjen Dec. at 232:4-9; Exhibit M to Tietjen Dec. at 82:15-84:10, 86:5-6; Exhibit N to Tietjen Dec. at 29:1-11.

18. The Vendor Agreement does not have a durational term and could have been terminated with proper notice at any time by Priddis. See Exhibit D to Tietjen Dec.

19. In 2003, Priddis reaffirmed the terms of the Vendor Agreement, including the term that Priddis product was 100% returnable. See Exhibit J to Tietjen Dec.; Exhibit I to Tietjen Dec. at 203:12-204:8, 205:3-13.

20. TWEC returned product as a regular course of its business. See Exhibit M to Tietjen Dec at 26:10-11; Exhibit F to Tietjen Dec. at 180:5-10.

21. While TWEC had the right to return product for any reason, many of its returns were due to the return of holiday product (see Exhibit M at 13:2-10; Exhibit N to Tietjen Dec. at 30:21-31), slow sales (see Exhibit N to Tietjen Dec. at 30:2-18), seasonal product returns (see

Exhibit M to Tietjen Dec. at 16:5-21) or the closing of individual stores. See Exhibit M to Tietjen Dec. at 16:18-21, Exhibit N to Tietjen Dec. at 31:21-33:9.

22. TWEC routinely worked with Priddis to determine the product to be returned. See Exhibit O to Tietjen Dec. at 168:7-12; Exhibit M to Tietjen Dec. at 7:4-10, 8:11-12, 10:9-11:5, 17:17-18:16; Exhibit N to Tietjen Dec. at 25:7-28:10, 35:23-36:4.

23. On or about December 20, 2000 Priddis agreed in writing to pay a 10% "Rack Placement fee" to TWEC. See Exhibit P to Tietjen Dec.; Exhibit Q to Tietjen Dec.; Exhibit M to Tietjen Dec. at 143:12-146:4, 149:8-12, 150:6; Exhibit I to Tietjen Dec. at 205: 19-206:7; Compl. ¶96.

24. Priddis subsequently entered into Rack Placement fee agreements for the years 2002 and 2003. See Exhibit R to Tietjen Dec.; Exhibit S to Tietjen Dec.; Compl. ¶97.

25. Several outside factors contributed to Priddis' financial problems. First, during the course of Priddis's relationship with TWEC, Priddis lost one of its largest customers, Music Land, when it was acquired by Best Buy. See Exhibit E to Tietjen Dec. at 250:11-251:1, 258:8-11. Second, the overall popularity of the karaoke trend declined. See Exhibit N to Tietjen Dec. at 20:18-21:23; Exhibit F to Tietjen Dec. at 170:3-9.

26. The effect of the decline in popularity is illustrated by the dramatic decline in Priddis' open accounts. During its relationship with TWEC, Priddis had approximately 250 open accounts. See Exhibit F to Tietjen Dec. at 23:17-33:12, 169:13-23. That number has since been reduced to three. Id.

27. During the course of their relationship with Priddis, TWEC changed its distribution system to allow Priddis to ship through distribution centers as opposed to individual retail stores. See Exhibit T to Tietjen Dec.; Exhibit E to Tietjen Dec. at 298:8-299:5.

28. During the course of the relationship, the Priddis account presented problems with double billing, shortages and freight charges. See Exhibit O at 144:20-145:3, 145:17- 146:2; Exhibit U to Tietjen Dec.; Exhibit V to Tietjen Dec.; Exhibit W to Tietjen Dec.

29. The Priddis account was reconciled on several occasions. See Exhibit F to Tietjen Dec. at 242:2-13, 244:8-11; Exhibit X to Tietjen Dec.; Exhibit Y to Tietjen Dec.; Exhibit Z to Tietjen Dec.; Exhibit O to Tietjen Dec. at 148:1-152:8; Exhibit AA to Tietjen Dec., Exhibit BB to Tietjen Dec.; Exhibit CC to Tietjen Dec.; Exhibit DD to Tietjen Dec., Exhibit EE to Tietjen Dec.

30. In response to Priddis inquiries about billing, TWEC provided explanation when asked. See Exhibit F to Tietjen Dec. at 64:20-65-9. TWEC also provided Priddis with a short

memorandum that explained their billing codes. See Exhibit FF to Tietjen Dec.; Exhibit F to Tietjen Dec. at 78:22-79:1, 79:17- 22, 160:12-17.

31. TWEC always paid any outstanding balance in full. See Exhibit M to Tietjen Dec. at 86:5-10, 120:10-12, 121:8-13; Exhibit O to Tietjen Dec. at 124:3-16.

32. During the course of its relationship with TWEC, Priddis was paid over $3 million. See Compl. ¶26. Priddis' margin on these sales was approximately 50%. See Exhibit E to Tietjen Dec. at 256:1-6.

33. In February, 2004, a large order was shipped to TWEC. When the order was shipped, Priddis was already contemplating legal action. See Exhibit F to Tietjen Dec. at 225:6-226:5, 235:5-23. The value of that order is included in the Priddis damage calculations. See id. at 237:9-238:1; Exhibit GG to Tietjen Dec.

34. In March, 2004, without prior notice, Priddis cancelled the Vendor Agreement by refusing to accept a return of goods and has since never allowed any returns. Exhibit E 284:10-23; Exhibit O to Tietjen Dec. at 13:3-17, 135:14-17; Exhibit F to Tietjen Dec. at 152:21-155:1, 226:4-21, 230:10-17, 235:5-23; Compl. ¶116; Utah Compl. ¶15.

35. On August 25, 2005, this Court dismissed the fraud, conversion, and implied covenant for good faith and fair dealing allegations from the Priddis Complaint. See Exhibit H to Tietjen Dec.

Dated: October 2, 2006

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